

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

In the Matter of the:

Petition of the Union Pacific Railroad Company for the Closure of the Public Crossing of the Union Pacific Railroad Company Tracks with East Norwich Avenue in the City of St. Francis, Milwaukee County

9040-RX-1208

FINAL DECISION

By letter dated May 11, 2005, the Union Pacific Railroad Company (UP) filed a petition with the Office of the Commissioner of Railroads (OCR) under Sec. 195.28 and Sec. 195.29, Stats. for the closure of the public crossing of the Union Pacific Railroad Company tracks with East Norwich Avenue in the City of St. Francis, Milwaukee County (crossing no. 176-779 V).

Pursuant to due notice, public hearing was held in this matter on August 25, 2005, in St. Francis, Wisconsin with hearing examiner David J. Meier presiding.

On June 2, 2006, the hearing examiner issued a proposed decision. By letter dated June 14, 2006, the Wisconsin Department of Transportation (DOT) filed comments generally supporting the proposed decision. However, DOT did object to the cost-sharing and to the deadline for construction of a vehicle turnaround. DOT requested a rehearing on the issue of funding. The Commissioner sets new deadlines, clarifies the funding apportionment, but declines to reopen the hearing.

The Commissioner changes the deadlines from the proposed decision. The closure takes place in basically two steps. First is the placement of temporary barricades by the city and removal of the crossing by the railroad between **August 24, 2006 and August 31, 2006**. Second, the city constructs a vehicle turnaround on one approach and installs permanent barricades by **October 31, 2007**.

The proposed decision referenced the use of "funds to the extent of \$70,000.00 anticipated to be provided by the Wisconsin Department of Transportation" (the amount should actually have been stated as \$63,000). DOT objected and requested that this matter be reopened. The Commissioner declines. The Norwich Avenue at-grade crossing was supposed to be closed in association with the Lake Parkway project. In 1999, DOT and the City entered into a state/municipal agreement to fund the closure with a 90/10 split using \$63,000 in federal funds and \$7,000 in municipal funds. The crossing was never closed so the money was never expended, but the agreement is still in force. This order directs that those funds now be used.

The proposed decision also referenced a state-administered federal safety program that pays a municipality up to \$7500 for the closure of an at-grade crossing when the railroad first makes a \$7500 incentive payment. DOT objected to any implication in the proposed decision that the

\$7500 federal payment would definitely be made (in addition to the other funding discussed above). The allocation of those federal funds is determined by a multi-agency committee, including DOT and OCR, but is not a decision that can be made unilaterally by the OCR. The order does not require the payment of this incentive payment (nor did the proposed decision). If the railroad makes the payment, then the committee will decide whether to grant the matching funds.

With the changes in the deadlines, the Commissioner adopts the proposed decision as final.

Appearances:

Parties

In Support:

Union Pacific Railroad Co., Petitioner
by
Attorney Mack H. Shumate

City of St. Francis
by

Mayor Al Richards,
City Administrator, Ralph Voltner,
Alderman Ted Jarosh
And
Melinda Dejewski, City Engineer

In Opposition: None

Other than the parties, no members of the Public registered at the hearing either in support of or in opposition to the petition for closure.

Findings of Fact

THE COMMISSIONER FINDS:

The Commissioner had directed the staff of the Office of the Commissioner of Railroads to investigate and report on the condition of five crossings in the city of St. Francis including the subject crossing. That investigation was carried out by Mr. David A. Schwengel, an OCR Rail Safety Analyst in June and September of 2003. The resultant report was incorporated into a further investigation and report performed by TKDA, an engineering firm, and specifically by Mr. Thomas G. Domres, a licensed professional engineer. The TKDA study was commissioned by

the UP. The TKDA report and the incorporated OCR report were offered and accepted in evidence at the hearing. Both of those reports conclude that the subject crossing should be closed. The conclusions and reasoning of the combined reports are hereby adopted and incorporated herein as though set forth at length.

The City of St. Francis has not opposed the petition for closure. The City is eligible for a closure incentive payment in the amount of \$7,500.00 from the Union Pacific Railroad Company. In the event that such incentive payment, or a part thereof, is paid to the City by the UP, then the City of St. Francis will become **eligible** to apply to the Wisconsin Department of Transportation for a matching grant in an amount not to exceed that incentive payment received by it from the UP or \$7,500.00, whichever is greater.

The public convenience and safety will be served by the closure of the crossing of the Union Pacific Railroad Company tracks with Norwich Avenue in the city of St. Francis.

End-of-Road Treatment

The closure of the subject crossing will necessitate the construction of a cul de sac or other type of turnaround at the terminus of Norwich Avenue on the western approach to the UP right-of-way. The City of St. Francis has obtained engineering plans and cost estimates that exceed \$70,000.00 for the construction of such turnarounds. The Wisconsin Department of Transportation has identified funds in that amount from a pre-existing project that is specified for that purpose. That amount is found to exceed a reasonable cost associated with end-of-road treatments. Therefore, it is not reasonable to allocate costs against the UP for such end-of-road treatments.

The order requires the City of St. Francis, using funds to the extent of \$63,000 to be provided by the Wisconsin Department of Transportation, to build a vehicle turnaround area on the western approach to the existing Norwich Avenue crossing. The City may construct any non-cul de sac turnaround design consistent with the AASHTO's, "*A Policy on Geometric Design of Highways and Streets*", 2001 edition.

The order requires the Union Pacific Railroad Company to remove the crossing surface and the roadway surface from within its right-of-way at Norwich Avenue between **August 24, 2006 and August 31, 2006**. The order also requires the City of St. Francis to install Type III barricades with red and white reflective material on each approach to the crossing by **August 24, 2006**. These are temporary barricades that the City is required to replace with permanent steel guardrail barricades on each approach when it constructs the vehicle turnaround on the westerly approach.

Ultimate Conclusions on the Issues

THE COMMISSIONER CONCLUDES:

1. That the closure of the crossing at-grade of the Union Pacific Railroad Company tracks with Norwich Avenue in the City of St. Francis, Milwaukee County will promote public safety and convenience.

2. That it is reasonable, in light of the payment for the turnaround by the Wisconsin Department of Transportation, for the Union Pacific Railroad Company to pay all of the cost to install permanent barricades and to remove the crossing and the roadway approaches within its right-of-way.

Conclusion of Law

THE COMMISSIONER CONCLUDES:

That the jurisdiction of the Office of the Commissioner of Railroads under §§195.28 and 195.29, Stats., extends to this matter. Accordingly, the Office enters an order consistent with the findings of fact.

Order

THE COMMISSIONER ORDERS:

1. That the **Union Pacific Railroad Company** shall remove the crossing surface and the roadway approaches within its right-of-way for the crossing at-grade of Norwich Avenue with their tracks in the City of St. Francis, Milwaukee County between **August 24, 2006 and August 31, 2006** (crossing no. 176-779 V).

2. That in conjunction with the removal of the crossing, the **City of St. Francis** shall install Type III barricades with red and white stripes at or near the terminus of each approach to the crossing at-grade of **Norwich Avenue** with the Union Pacific Railroad Company tracks in the City of St. Francis, Milwaukee County by **August 24, 2006**, [see Sections 3F-1, 6C-8 and Figure 6-14 in the Manual on Uniform Traffic Control Devices (MUTCD)].

3. That the **City of St. Francis** shall install and maintain a cul de sac or an L-type, T-type, Y-type or I Branch turnarounds at or near the western terminus of **Norwich Avenue** consistent with American Association of State Highway and Transportation Officials (AASHTO) guidelines (*A Policy on Geometric Design of Highways and Streets*, 2001 edition, pages 398-400 and Exhibit 5-8) in the City of St. Francis, Milwaukee County by **October 31, 2007**.

4. That the **City of St. Francis** shall install and maintain a steel guard rail barricade with reflective red and white stripes at or near the terminus of the approaches on each side of the crossing at-grade of **Norwich Avenue** with the Union Pacific Railroad Company tracks in the City of St. Francis, Milwaukee County by **October 31, 2007**.

5. That the **Union Pacific Railroad Company** shall give notice in writing to the City of St. Francis at least 10 days prior to commencing work to close the crossings.

6. That the **Union Pacific Railroad Company** shall reimburse to the City of St. Francis all of the cost for the installation of permanent barricades and shall be wholly responsible for the removal of the crossing and the roadway approaches within its right-of-way. The Union Pacific Railroad Company shall also bear any cost assessed to the railroad pursuant to §195.60, Stats., for the investigation of this matter by the Office. The railroad shall not pass on those assessment costs either directly or indirectly.

7. That the **City of St. Francis** shall bear the costs to install and maintain the temporary barricades as well as the costs of any ongoing maintenance of permanent barricades at the subject crossing.

8. That the **Wisconsin Department of Transportation** shall provide \$63,000 and the **City of St. Francis** shall provide \$7,000 in funding pursuant to the state/municipal agreement dated December 20, 1999, Project ID 2990-07-50 toward the cost of the closure.

9. That the turnaround installation work herein ordered shall not begin until the district office of the Wisconsin Department of Transportation informs the City of St. Francis that they may start such work and such start notice will not be issued until appropriate federal aid or other funding arrangements have been assured. The cost of the turnaround project initiated before the start notice will not be reimbursed with public funds and shall be the responsibility of the City of St. Francis.

10. That jurisdiction is retained.

Dated at Madison, Wisconsin, this (July 11, 2006).

By the Office of the Commissioner of Railroads.

Rodney W. Kreunen
Commissioner of Railroads

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